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SENATE BILL 954

47TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2005

INTRODUCED BY

James G. Taylor

AN ACT

RELATING TO CRIMINAL LAW; ENACTING THE FLYING WHILE INTOXICATED ACT; PRESCRIBING PENALTIES FOR OPERATING AN AIRCRAFT WHILE UNDER THE INFLUENCE OF ALCOHOL OR DRUGS; AUTHORIZING TESTING OF A PERSON'S BLOOD OR BREATH FOR ALCOHOL OR DRUGS; REPORTING TO THE FEDERAL AVIATION ADMINISTRATION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. [NEW MATERIAL] SHORT TITLE. -- Sections 1 through 13 of this act may be cited as the "Flying While Intoxicated Act".

Section 2. [NEW MATERIAL] DEFINITIONS. -- As used in the Flying While Intoxicated Act:

A. "aircraft" means any contrivance used or designed for navigation of or flight in the air, except a parachute or other contrivance designed for such navigation but

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1 used primarily as safety equipment;

2 B. "conviction" means an adjudication of guilt and
3 does not include imposition of a sentence; and

4 C. "operate" means to physically handle the
5 controls of an aircraft, set an aircraft in motion or pilot an
6 aircraft.

7 Section 3. [NEW MATERIAL] OPERATING AN AIRCRAFT WHILE
8 UNDER THE INFLUENCE OF INTOXICATING LIQUOR OR DRUGS. --

9 A. It is unlawful for a person who is under the
10 influence of intoxicating liquor to operate an aircraft.

11 B. It is unlawful for a person who is under the
12 influence of any drug to a degree that renders the person
13 incapable of safely operating an aircraft to operate an
14 aircraft.

15 C. It is unlawful for a person who has an alcohol
16 concentration of two one hundredths or more in the blood or
17 breath to operate an aircraft.

18 D. A person under first conviction pursuant to this
19 section shall be punished, notwithstanding the provisions of
20 Section 31-18-13 NMSA 1978, by imprisonment for not more than
21 ninety days or by a fine of not more than five hundred dollars
22 (\$500), or both; provided that if the sentence is suspended in
23 whole or in part or deferred, the period of probation may
24 extend beyond ninety days but shall not exceed one year. On a
25 first conviction pursuant to this section, any time spent in

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1 jail for the offense prior to the conviction for that offense
2 shall be credited to any term of imprisonment fixed by the
3 court. A deferred sentence pursuant to this subsection shall
4 be considered a first conviction for the purpose of determining
5 subsequent convictions.

6 E. A second or subsequent conviction pursuant to
7 this section shall be punished, notwithstanding the provisions
8 of Section 31-18-13 NMSA 1978, by imprisonment for not more
9 than three hundred sixty-four days or by a fine of not more
10 than seven hundred fifty dollars (\$750), or both; provided that
11 if the sentence is suspended in whole or in part, the period of
12 probation shall not exceed one year.

13 Section 4. [NEW MATERIAL] GUILTY PLEAS--LIMITATIONS.--
14 When a complaint or information alleges a violation of Section
15 3 of the Flying While Intoxicated Act, any plea of guilty
16 thereafter entered in satisfaction of the charges shall include
17 at least a plea of guilty to the violation of one of the
18 subsections of Section 3 of that act, and no other disposition
19 by plea of guilty to any other charge in satisfaction of the
20 charge shall be authorized if the results of a test performed
21 pursuant to that act disclose that the blood or breath of the
22 person charged contains an alcohol concentration of two one
23 hundredths or more.

24 Section 5. [NEW MATERIAL] MUNICIPAL AND COUNTY
25 ORDINANCES--UNLAWFUL ALCOHOL CONCENTRATION LEVEL FOR FLYING

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1 WHILE UNDER THE INFLUENCE OF INTOXICATING LIQUOR OR DRUGS. -- No
2 municipal or county ordinance prohibiting the operation of an
3 aircraft while under the influence of intoxicating liquor or
4 drugs shall be enacted that provides for an unlawful alcohol
5 concentration level that is different than the alcohol
6 concentration level provided in Section 3 of the Flying While
7 Intoxicated Act.

8 Section 6. [NEW MATERIAL] BLOOD-ALCOHOL TESTS-- PERSONS
9 QUALIFIED TO PERFORM TESTS-- RELIEF FROM CIVIL AND CRIMINAL
10 LIABILITY. -- Only a physician, licensed professional or
11 practical nurse or laboratory technician or technologist
12 employed by a hospital or physician shall withdraw blood from a
13 person in the performance of a blood-alcohol or drug test. A
14 physician, nurse, technician or technologist who withdraws
15 blood from a person in the performance of a blood-alcohol or
16 drug test that has been directed by a law enforcement officer,
17 or by a judicial or probation officer, shall not be held liable
18 in a civil or criminal action for assault, battery, false
19 imprisonment or any conduct of a law enforcement officer,
20 except for negligence, nor shall a person assisting in the
21 performance of the test, or a hospital wherein blood is
22 withdrawn in the performance of the test, be subject to civil
23 or criminal liability for assault, battery, false imprisonment
24 or any conduct of a law enforcement officer, except for
25 negligence.

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1 Section 7. [NEW MATERIAL] BLOOD-ALCOHOL TEST--LAW
2 ENFORCEMENT, JUDICIAL OR PROBATION OFFICER UNAUTHORIZED TO MAKE
3 ARREST OR DIRECT TEST EXCEPT IN PERFORMANCE OF OFFICIAL DUTIES
4 AUTHORIZED BY LAW.--Nothing in the Flying While Intoxicated Act
5 is intended to authorize a law enforcement officer, or a
6 judicial or probation officer, to make an arrest or direct the
7 performance of a blood-alcohol or drug test, except in the
8 performance of his official duties or as otherwise authorized
9 by law.

10 Section 8. [NEW MATERIAL] IMPLIED CONSENT TO SUBMIT TO
11 CHEMICAL TEST.--

12 A. A person who operates an aircraft within this
13 state shall be deemed to have given consent, subject to the
14 provisions of the Flying While Intoxicated Act, to chemical
15 tests of his blood or breath or both, approved by the
16 scientific laboratory division of the department of health
17 pursuant to the provisions of Section 24-1-22 NMSA 1978 as
18 determined by a law enforcement officer, or for the purposes of
19 determining the drug or alcohol content of his blood if
20 arrested for any offense arising out of acts alleged to have
21 been committed while the person was operating an aircraft under
22 the influence of an intoxicating liquor or drug.

23 B. The arrested person shall be advised by a law
24 enforcement officer that failure to submit to a chemical test
25 may be introduced into evidence in court and that the court,

1 upon conviction, may impose increased penalties for the
2 person's failure to submit to a chemical test.

3 C. A test of blood or breath or both, approved by
4 the scientific laboratory division of the department of health
5 pursuant to the provisions of Section 24-1-22 NMSA 1978, shall
6 be administered at the direction of a law enforcement officer
7 having reasonable grounds to believe that the person was
8 operating an aircraft while under the influence of an
9 intoxicating liquor or drug.

10 D. A person who operates an aircraft in this state
11 and who is involved in a fatal flying incident shall be deemed
12 to have given consent, subject to the provisions of the Flying
13 While Intoxicated Act, to mandatory chemical tests of his blood
14 or breath or both, as determined by a law enforcement officer
15 and approved by the scientific laboratory division of the
16 department of health pursuant to the provisions of Section
17 24-1-22 NMSA 1978.

18 Section 9. [NEW MATERIAL] CONSENT OF PERSON INCAPABLE OF
19 REFUSAL NOT WITHDRAWN. --A person who is dead, unconscious or
20 otherwise in a condition rendering him incapable of refusal
21 shall be deemed not to have withdrawn the consent provided by
22 the Flying While Intoxicated Act, and the test designated by
23 the law enforcement officer may be administered.

24 Section 10. [NEW MATERIAL] ADMINISTRATION OF CHEMICAL
25 TEST-- PAYMENT OF COSTS-- ADDITIONAL TESTS. --

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1 A. Only the persons authorized by the Flying While
2 Intoxicated Act shall withdraw blood from a person for the
3 purpose of determining its alcohol or drug content. This
4 limitation does not apply to the taking of samples of breath.

5 B. The person tested shall be advised by the law
6 enforcement officer of the person's right to be given an
7 opportunity to arrange for a physician, licensed professional
8 or practical nurse or laboratory technician or technologist who
9 is employed by a hospital or physician of the person's own
10 choosing to perform a chemical test in addition to a test
11 performed at the direction of a law enforcement officer.

12 C. Upon the request of the person tested, full
13 information concerning the test performed at the direction of
14 the law enforcement officer shall be made available to the
15 persons as soon as it is available from the person performing
16 the test.

17 D. The agency represented by the law enforcement
18 officer at whose direction the chemical test is performed shall
19 pay for the chemical test.

20 E. If a person exercises the right under Subsection
21 B of this section to have a chemical test performed upon him by
22 a person of his own choosing, the cost of that test shall be
23 paid by the agency represented by the law enforcement officer
24 at whose direction a chemical test was administered pursuant to
25 Section 8 of the Flying While Intoxicated Act.

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1 Section 11. [NEW MATERIAL] REPORTING TO THE FEDERAL
2 AVIATION ADMINISTRATION. --

3 A. A law enforcement officer shall report to the
4 federal aviation administration:

5 (1) the name of a person and the results of
6 that person's chemical test administered pursuant to the Flying
7 While Intoxicated Act; or

8 (2) the name of a person who refused to submit
9 to a chemical test under that act.

10 B. If a person is convicted of operating an
11 aircraft while under the influence of intoxicating liquor or
12 drugs, a report of the conviction shall be forwarded by the
13 court in which the conviction occurred to the federal aviation
14 administration.

15 Section 12. [NEW MATERIAL] USE OF TESTS IN CRIMINAL OR
16 CIVIL ACTIONS--LEVELS OF INTOXICATION--MANDATORY CHARGING. --

17 A. The results of a test performed pursuant to the
18 Flying While Intoxicated Act may be introduced into evidence in
19 a civil action or criminal action arising out of the acts
20 alleged to have been committed by the person tested for
21 operating an aircraft while under the influence of intoxicating
22 liquor or drugs.

23 B. When the blood or breath of the person tested
24 contains an alcohol concentration of two one hundredths or
25 more, the arresting officer shall charge him with a violation

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1 of Section 3 of the Flying While Intoxicated Act.

2 C. The determination of alcohol concentration shall
3 be based on the grams of alcohol in one hundred milliliters of
4 blood or the grams of alcohol in two hundred ten liters of
5 breath.

6 D. The alcohol concentration in a person's blood or
7 breath shall be determined by a chemical test administered to
8 the person within three hours of the alleged flying while under
9 the influence of intoxicating liquor. In a prosecution
10 pursuant to the provisions of the Flying While Intoxicated Act,
11 it is a rebuttable presumption that a person is in violation of
12 the provisions of that act if the person has an alcohol
13 concentration of two one hundredths or more in his blood or
14 breath as determined by a chemical test administered to the
15 person within three hours of the alleged flying while under the
16 influence of intoxicating liquor. If the chemical test is
17 administered more than three hours after the alleged flying
18 while under the influence of intoxicating liquor, the test
19 result is admissible as evidence of the alcohol concentration
20 in the person's blood or breath at the time of the alleged
21 flying and the trier of fact shall determine what weight to
22 give the test result.

23 E. If a person is convicted of operating an
24 aircraft while under the influence of intoxicating liquor or
25 drugs, the trial judge shall be required to inquire into past

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1 convictions of the person for operating an aircraft while under
2 the influence of intoxicating liquor or drugs before sentence
3 is entered in the matter.

4 Section 13. [NEW MATERIAL] AIRCRAFT--INFLUENCE OF
5 INTOXICATING LIQUOR OR DRUGS--FEE UPON CONVICTION. --

6 A. A person convicted of a violation of the Flying
7 While Intoxicated Act shall be assessed by the court, in
8 addition to any other fee or fine, a fee of sixty-five dollars
9 (\$65.00) to defray the costs of chemical and other tests used
10 to determine the influence of intoxicating liquor or drugs.

11 B. All fees collected pursuant to the provisions of
12 this section shall be transmitted monthly to the crime
13 laboratory fund. All balances in the crime laboratory fund
14 collected pursuant to this section are appropriated to the
15 administrative office of the courts for payment upon invoice to
16 the scientific laboratory division of the department of health
17 for the costs of chemical and other tests used to determine the
18 influence of intoxicating liquor or drugs.

19 C. Payment of funds out of the crime laboratory
20 fund of fees collected pursuant to this section shall be made
21 upon vouchers issued and signed by the director of the
22 administrative office of the courts upon warrants drawn by the
23 department of finance and administration.

24 Section 14. Section 24-1-22 NMSA 1978 (being Laws 1981,
25 Chapter 165, Section 1, as amended) is amended to read:

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1 "24-1-22. SCIENTIFIC LABORATORY DIVISION-- TESTING

2 METHODS-- CERTIFICATION. --

3 A. The scientific laboratory division of the
4 department of health is authorized to promulgate and approve
5 satisfactory techniques or methods to test persons believed to
6 be operating a motor vehicle, ~~[or]~~ a motorboat or an aircraft
7 under the influence of drugs or alcohol and to issue
8 certification for test operators and their instructors that
9 shall be subject to termination or revocation at the discretion
10 of the scientific laboratory division. The scientific
11 laboratory division is further authorized to establish or
12 approve quality control measures for alcohol breath testing and
13 to establish or approve standards of training necessary to
14 ensure the qualifications of individuals conducting these
15 analyses or collections.

16 B. The scientific laboratory division shall
17 establish criteria and specifications for equipment, training,
18 quality control, testing methodology, blood-breath
19 relationships and the certification of operators, instructors
20 and collectors of breath samples.

21 C. All laboratories analyzing breath, blood or
22 urine samples pursuant to the provisions of the Implied Consent
23 Act, ~~[and]~~ the Boating While Intoxicated Act and the Flying
24 While Intoxicated Act shall be certified by the scientific
25 laboratory division. The certification shall be granted in

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1 accordance with the rules and regulations of the scientific
2 laboratory division and shall be subject to termination or
3 revocation for cause. "

4 Section 15. EFFECTIVE DATE. --The effective date of the
5 provisions of this act is July 1, 2005.

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